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JUL 13 2004

CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS, MONTANA

Attorneys for Defendants.

FILED

JUL - 9 2004

PATRICK E. DUFFY, CLERK

By Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BUTTE DIVISION

MAGTEN ASSET MANAGEMENT
CORPORATION,

Plaintiff,

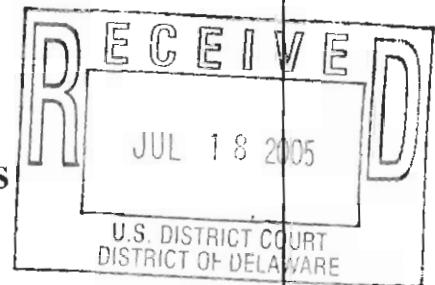
vs.

MIKE J. HANSON and ERNIE J. KINDT,

Defendant

Case No.: CV-04-26-BU-RFC

MOTION TO DISMISS



05 - 499

Defendants Michael Hanson and Ernie Kindt¹ through their attorneys of record, Browning, Kaleczyc, Berry & Hoven, P.C., hereby move this Court pursuant to Fed. R. Civ. P. 12 to dismiss this case for failure to state a claim against Defendants for which relief may be granted since: (1) as a matter of law, only NorthWestern Corporation and not the named Defendants had the legal authority to order the transfer of certain assets and liabilities from its wholly owned subsidiary to the corporate parent; (2), as a matter of law, the named Defendants owed no fiduciary duty to Magten or any other holder of QUIPS which were general creditors of

¹ Both Jack Haffey and Ellen Senechal retired prior to the transfer of assets and liabilities complained of by Magten. Magten has stipulated to a dismissal of Mr. Haffey and Ms. Senechal, which Stipulation and Proposed Order are currently pending before this Court.

1 the limited liability company; and (3) in any event, the terms of the relevant documents on which
2 Magten bases its claim permitted the transfer of the assets and liabilities at issue here from the
3 limited liability company to NorthWestern.

4 For these reasons and the reasons more fully set forth in the accompanying Memorandum
5 in Support of the Motion to Dismiss, Defendants respectfully request that the Complaint against
6 them be dismissed with prejudice.

7 Dated this 9th day of July, 2004.

8 BROWNING, KALECZYC, BERRY & HOVEN, P.C.

9
10 By Kimberly Beatty
11 Stanley T. Kaleczyc
Kimberly A. Beatty

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 1st day of July, 2004, a true and correct
3 copy of the foregoing was mailed by first-class mail, postage prepaid, addressed to:

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5 J. Devlan Geddes
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Jennifer J. Balsley